REMARKS

I. Introduction

With the addition of new claims 40 to 42, claims 18 to 42 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

II. Rejection of Claims 18, 25, 26 and 37 to 39 Under 35 U.S.C. § 102(b)

Claims 18, 25, 26 and 37 to 39 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,788,417 ("Graflind"). It is respectfully submitted that Graflind does not anticipate the present claims for at least the following reasons.

Claim 18 recites, inter alia, that an electrical circuit is adapted to monitor a phase change of a stent from a martensite phase to an austenite phase and to control a flow of electrical current through a stent as a function of a phase change of the stent from a martensite phase to an austenite phase. The Office Action appears to ignore these structural features. In this regard, the Examiner's attention is respectfully directed to the decision of In re Venezia, 530 F.2d 956, 189 U.S.P.Q. 149 (C.C.P.A. 1976), which plainly sets forth that "adapted to" language imparts present structure to a claim. In the context of the present claim, the "adapted to" phrase imparts certain structure and attributes to an electrical circuit, e.g., that an electrical circuit is so structured to: (1) monitor a phase change of a stent from a martensite phase to an austenite phase; and (2) control a flow of electrical current through a stent as a function of a phase change of the stent from a martensite phase to an austenite phase. The electrical heating pad described by Graflind does not include an electrical circuit that is so structured. As such, Graflind does not anticipate claim 18.

The "Response to Arguments" section of the Office Action does not in any manner support the present rejection. Rather, in the "Response to Arguments" section of the Office Action, it is plainly apparent that certain features are being improperly read out of the claims. Furthermore, the Office Action appears to recognize that modifications to the electrical heating pad described by Graflind must be made in order to satisfy all of the features recited in claim 18. As such, it is further apparent that the present anticipation rejection cannot be sustained.

In view of all of the foregoing, it is respectfully submitted that Graflind does not anticipate claim 18.

As for claims 25, 26 and 37 to 39, which depend from claim 18 and therefore include all of the features recited in claim 18, it is respectfully submitted that Graflind does not anticipate these dependent claims for at least the same reasons more fully set forth above in support of the patentability of claim 18.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

III. Rejection of Claims 18 to 20, 25, 26 and 37 to 39 Under 35 U.S.C. § 102(b)

Claims 18 to 20, 25, 26 and 37 to 39 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,695,709 ("Sachs et al."). It is respectfully submitted that Sachs et al. do not anticipate the present claims for at least the following reasons.

Sachs et al. purport to relate to a method and apparatus for heating and controlling the temperature of ultra small volumes. Sachs et al. make no mention whatsoever of an electrical circuit that is structured to: (1) monitor a phase change of a stent from a martensite phase to an austenite phase; and (2) control a flow of electrical current through a stent as a function of a phase change of the stent from a martensite phase to an austenite phase. Any assertions to the contrary constitute nothing more than pure speculation or conjecture, which cannot sustain the present rejection.

As indicated above, the "Response to Arguments" section of the Office Action does not in any manner support the present rejection. Rather, in the "Response to Arguments" section of the Office Action, it is plainly apparent that certain features are being improperly read out of the claims. Furthermore, the Office Action appears to recognize that modifications to the apparatus described by Sachs et al. must be made in order to satisfy all of the features recited in claim 18. As such, it is respectfully submitted that Sachs et al. do not anticipate claim 18.

As for claims 19, 20, 25, 26 and 37 to 39, which depend from claim 18 and therefore include all of the features recited in claim 18, it is respectfully submitted that Sachs et al. do not anticipate these dependent claims for at least the same reasons more fully set forth above in support of the patentability of claim 18.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

IV. Rejection of Claims 18 to 26 and 37 to 39 Under 35 U.S.C. § 102(b)

Claims 18 to 26 and 37 to 39 were rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 4,359,626 ("Potter"). It is respectfully submitted that Potter does not anticipate the present claims for at least the following reasons.

Potter purports to relate to an electric blanket heating control with capacitance sensing. Potter makes no mention whatsoever of an electrical circuit that is structured to: (1) monitor a phase change of a stent from a martensite phase to an austenite phase; and (2) control a flow of electrical current through a stent as a function of a phase change of the stent from a martensite phase to an austenite phase. Any assertions to the contrary constitute nothing more than pure speculation or conjecture, which cannot sustain the present rejection.

As indicated above, the "Response to Arguments" section of the Office Action does not in any manner support the present rejection. Rather, in the "Response to Arguments" section of the Office Action, it is plainly apparent that certain features are being improperly read out of the claims. Furthermore, the Office Action appears to recognize that modifications to the device described by Potter must be made in order to satisfy all of the features recited in claim 18. As such, it is respectfully submitted that Sachs et al. do not anticipate claim 18.

The reference in the "Response to Arguments" section of the Office Action to alleged "common scientific knowledge of circuits" is entirely irrelevant to the issue of whether Potter anticipates claim 18. Indeed, any unsupported reliance on general conclusions of what may be "basic knowledge" or "common sense" is entirely inappropriate. In re Lee, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002).

In view of all of the foregoing, it is respectfully submitted that Potter does not anticipate claim 18.

As for claims 19, 20, 25, 26 and 37 to 39, which depend from claim 18 and therefore include all of the features recited in claim 18, it is respectfully submitted that Sachs et al. do not anticipate these dependent claims for at least the same reasons more fully set forth above in support of the patentability of claim 18.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

V. Allowed Claims 28 to 36

Applicants note with appreciation the indication that claims 28 to 36 are allowed. New claims 40 to 42 depend from claim 28 and are therefore believed to be in condition for immediate allowance.

VI. New Claims 40 to 42

New claims 40 to 42 have been added herein. It is respectfully submitted that claims 40 to 42 add no new matter and are fully supported by the present application, including the Specification. Since claims 40 to 42 depend from claim 28, which has been allowed, it is respectfully submitted that claims 40 to 42 are patentable over the references relied upon for at least the same reasons that claim 28 was allowed.

VII. Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

KENYON & KENYON

Date: August 4, 2005 By: _____

Clifford A. Ulrich
Reg. No. 42,194

One Broadway
New York, New York 10004
(212) 425-7200
CUSTOMER NO. 26646